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October 7, 1983

J. Wilcox Brown, Chairman
Water Supply and Pollution
Control Commission
Hazen Drive
Concord, New Hampshire 03301

Re: Transfer of Property Proposed by the Crowleys

Dear Chairman Brown:

At the Commission's August 10, 1983 meeting, you requested on behalf of the Commission that I prepare a response to the following question:

Does the transfer of property proposed by the Crowleys constitute a "subdivision" under RSA 149-E:2, XIII requiring Commission approval pursuant to RSA 149-E:3, I?

The answer to your question is that insufficient information has been presented to the Commission to render a legal opinion which answers your question completely.

Facts

According to testimony presented to the Commission, Raymond and Richard Crowley hold title as tenants-in-common to land bordering Newfound Lake in Bristol, New Hampshire. The Crowleys obtained title to this land in a deed from their mother which separately describes three (3) contiguous parcels of land. Further testimony indicated that two (2) dwellings are situated on land owned by the Crowleys. Each building has its own septic system and is located on a different parcel of land as those parcels are described in the



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deed from Mrs. Crowley. The Crowleys have taken the position that they are owners as tenants-in-common of three (3) distinct parcels of land. They are now proposing to transfer their respective interests in this property to create two (2) lots so that each will hold title individually to one half of the total acreage of the three (3) separately described parcels.

Discussion

RSA 149-E:2, III states that "[a] resubdivision in which previously approved lots are grouped together to form larger lots shall not be deemed a subdivision for the purposes of this chapter." In the instant case, even if the three separately described parcels constitute distinct lots which may be transferred individually, the proposed "resubdivision" by the Crowleys to form two larger lots does not group together lots "previously approved" pursuant to a prior request for subdivision approval. Nevertheless, assuming these lots have not been merged, they could arguably be considered "previously approved lots" in the sense that the property owners would be allowed to continue using the existing septic systems without further Commission approval. In short, if a determination is made that these separately described parcels have not merged and retain their original lot lines, I would advise the Commission that such transfers do not constitute a "subdivision" as defined in RSA 149-E:2, XIII.

RSA 149-E:2, XIII states that "[t]he division of a parcel of land held in common and subsequently divided into parts among the several owners shall be deemed a subdivision under this chapter." Consequently, if in the instant case the three contiguous, commonly owned parcels are deemed by law to merge such that local subdivision approval is required in order to transfer any portion of the three merged lots, then the division of the Crowley property as proposed would constitute a subdivision under RSA 149-E:2, XIII.

Case law in New Hampshire indicates that under certain circumstances original lot lines may be abolished from the standpoint of subdivision and zoning regulation where there is common ownership of contiguous lots. See Robillard v. Town of Hudson, 120 N.H. 477 (1980); Town of Seabrook v. Tra-Sea Corp., 119 N.H. 937 (1979). In Robillard, the property owner obtained a permit to build a duplex house on one of two contiguous but substandard lots based on an understanding with the building inspector that the two lots would be considered as one to meet minimum lot size requirements. The Robillard court held that the property owner had

"effectively erased the individual lot lines" by acting on the permit, Robillard, supra at 480, even though the lots were separately described in the original deed and were separately assessed and taxed by the town. Consequently, the court upheld the Board of Adjustment's denial of a variance to construct a house on the second, contiguous lot. In Tra-Sea, the town argued that Tra-Sea Corp. had lost its right to convey seventeen (17) lots individually because it had operated the entire tract as a mobile home park. While the court agreed that a property owner could lose his exemption from subdivision requirements by abandoning or abolishing lot lines, Tra-Sea, supra at 942, the court found that Tra-Sea did not extinguish individual lot lines. Rather, Tra-Sea continuously rented separate lots to tenants, made improvements on separate lots, and mortgaged the lots individually. Id. at 943. In both the Robillard and the Tra-Sea cases the critical determination that the Court had to make was whether the owner treated the contiguous lots individually or as one lot. See also, Keene v. Town of Meredith, 119 N.H. 379 (1979) [where a majority of the Court found that two lots separately described in the original deed, treated separately by the town, and separated by a road remained distinct lots despite common ownership]. It should be noted that the treatment of contiguous lots by local authorities is not dispositive and that each situation must be addressed on a case-by-case basis. Robillard v. Town of Hudson, supra at 480.

In light of the above, the following information is needed at a minimum to determine if the three Crowley parcels should be deemed to have merged:

1. Whether they are separately taxed and assessed by the Town of Bristol.
2. Whether they or the dwellings located thereon have ever been separately rented.
3. Whether they are individually mortgaged.
4. Whether they have been improved individually.
5. Whether they share the same source of water.
6. Whether they have separate mailing addresses.
7. Whether the dwellings located thereon are serviced and billed separately for fuel and electricity.

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In summary, I would advise the Commission to refrain from making a final determination in this matter until such time as the Crowleys are able to present to the Commission sufficient evidence to show that they have treated the lots in question individually. Of course, the Commission may take action at any time to approve the Crowley proposal under its waiver authority as expressed in RSA 149-E:5, III.

I trust that this letter responds to your request of August 10, 1983. If I can be of further assistance in this matter, please let me know.

Yours truly,



Robert P. Cheney, Jr.
Assistant Attorney General
Environmental Protection Division

RPC, Jr./clp

83-133-I

cc: Mr. William A. Healy
Mr. William E. Evans